

# Review of the Selection Process for Commissioners of the Florida Public Service Commission

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Committee on Utilities & Telecommunications

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## **Summary**

Staff of the Committee on Utilities & Telecommunications conducted a review of the Public Service Commissioner selection process. Based on its review, the current selection process for Public Service Commission members in Florida is unnecessarily duplicative. The current selection process uses two separate bodies – the Public Service Commission Nominating Council and the Committee on Public Service Commission Oversight – to serve the same function of screening and nominating applicants. As a result, the investment of time and money required from the state and commissioner applicants is greater than it needs to be. In addition, current law creates a lack of continuity in staffing that can lead to inefficiencies. Current law also makes it difficult to establish voting procedures that avoid a potential impasse in nominating applicants for appointment.

To address the duplication of functions in the current selection process while retaining a role for the Legislature, three alternatives stand out: (1) abolish either the Nominating Council or the Oversight Committee and retain the surviving body to screen and nominate applicants; (2) create a new screening and nominating body that is essentially a combination of the Nominating Council and Oversight Committee; or (3) retain the Nominating Council to screen and nominate applicants and establish the Oversight Committee as the body responsible for appointing PSC commissioners. None of these alternatives are without their advantages and disadvantages. Under any alternative, including maintenance of the status quo, changes to current law can be made to address the staffing and voting issues raised in this report.

## **Introduction**

The Florida Public Service Commission (“PSC” or “Commission”) is responsible for ensuring that Florida consumers receive some of their most essential services in a safe, affordable, and reliable manner. These services include electricity, natural gas, telephone, water, and wastewater. In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation;<sup>1</sup> competitive market oversight;<sup>2</sup> and consumer protection, safety, and service.<sup>3</sup>

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<sup>1</sup> “Rate base/economic regulation involves analyzing requested rate changes and conducting earnings surveillance to ensure that regulated utilities are not exceeding their authorized rates of return.” (Florida Public Service Commission presentation to the Florida House of Representatives Jobs & Entrepreneurship Council on August 28, 2007).

<sup>2</sup> “Competitive market oversight involves facilitating the development of competitive markets, where directed by statute, and addressing issues associated with those markets.” (Florida Public Service Commission presentation to the Florida House of Representatives Jobs & Entrepreneurship Council on August 28, 2007).

<sup>3</sup> “Consumer protection, safety, and service involves answering, investigating, and responding to consumer contacts; distribution of materials to educate and inform consumers regarding utility matters; independent field testing of telecommunications companies’ service; and safety inspections of gas systems and electric construction confirming that services are provided in a safe, reasonable and timely manner.” (Florida Public Service Commission presentation to the Florida House of Representatives Jobs & Entrepreneurship Council on August 28, 2007).

The PSC is an arm of the Florida Legislature.<sup>4</sup> It consists of five commissioners who are appointed by the Governor to serve staggered four-year terms that begin January 2. There are no term limits. Mid-term vacancies on the Commission are filled for the unexpired portion of a term in the same manner as an appointment for a new four-year term.<sup>5</sup>

The current process for selecting a commissioner consists primarily of the following steps:

1. A public meeting of the Public Service Commission Nominating Council (“Nominating Council”) at which the Nominating Council selects the “most qualified applicants” to be interviewed;
2. A public meeting at which the Nominating Council interviews the selected applicants and nominates to the Committee on Public Service Commission Oversight (“Oversight Committee”) six persons for each vacancy;
3. A public meeting at which the Oversight Committee interviews the nominees and selects three persons per vacancy to recommend to the Governor for appointment;
4. Appointment of a commissioner for each vacancy by the Governor; and
5. Confirmation of each appointed commissioner by the Senate during the next regular session after the vacancy occurs.<sup>6</sup>

The purpose of this report is to explore whether the objective of this multi-step selection process can be achieved in a more efficient manner by alternative means. This report discusses the current selection process and issues associated with that process; presents alternatives to the current selection process and discusses the relative merits of each alternative; and identifies and addresses technical issues associated with the statutes governing the selection process.

## **Methodology**

Staff of the Committee on Utilities & Telecommunications reviewed the history of the PSC commissioner selection process and examined how the current process operates. In addition, staff conducted research to determine how commissioners are selected in other states. Staff also reviewed Senate staff reports from 1990 and 2004 related to the PSC selection process. Finally, staff reviewed other publicly available information related to the selection of commissioners.

## **Background**

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<sup>4</sup> S. 350.001, F.S.

<sup>5</sup> S. 350.01(2)(c), F.S.

<sup>6</sup> See ss. 350.012 and 350.031, F.S., and the Florida Public Service Commission Nominating Council Rules of Procedure, Section II.

The PSC is established in ch. 350, F.S. Section 350.001, F.S., declares that the PSC “has been and shall continue to be an arm of the legislative branch of government.”<sup>7</sup>

The PSC was originally created in 1887 as the Florida Railroad Commission, for the purpose of regulating railroad passenger and freight rates and operations. Over the years the authority of the PSC has changed. It currently has regulatory authority over electric, natural gas, telecommunications, and some water and wastewater service in Florida.<sup>8</sup>

Prior to 1978, the PSC consisted of three commissioners who were elected to four-year terms.<sup>9</sup> In 1978, the law was changed to create a five-member Commission whose members were appointed by the Governor. The 1978 law also created the Public Service Commission Nominating Council. The purpose of the Nominating Council was to screen applicants and recommend to the Governor not fewer than three persons for each vacancy on the Commission. The Governor would then appoint one of those persons.<sup>10</sup> While the Nominating Council statute has changed over the years, the selection process remained fundamentally unchanged until 2005.

The current process for selecting PSC commissioners was created in 2005.<sup>11</sup> The process, as summarized above, involves screening by the Nominating Council, further screening and recommendation by the Committee on Public Service Commission Oversight, appointment by the Governor, and confirmation by the Senate. The makeup and roles of each entity are described in detail below. A list of the methods used by other states is provided for informational purposes in Appendix A.

### *Public Service Commission Nominating Council*

The Nominating Council consists of nine members, at least one of whom must be age 60 or older. Three members, including one member of the House of Representatives, are appointed by the Speaker of the House of Representatives. Another three members,

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<sup>7</sup> Ratemaking for public utilities has generally been considered a legislative function. State legislatures typically delegate this function to a regulatory commission. While in some instances a commission may operate in a quasi-judicial fashion, it is generally not considered a court or other judicial tribunal. See 73B C.J.S. Public Utilities ss. 26 and 150 (June 2007). Further, the Florida Supreme Court has rejected claims that the PSC is an executive branch entity. *Chiles v. Public Service Commission Nominating Council*, 573 So.2d 829 (Fla. 1991). The PSC is nonetheless subject to the Administrative Procedures Act (ch. 120, F.S.) and public records and open meetings laws applicable to other state agencies. In addition, the PSC is considered a state agency for planning and budgeting purposes (ch. 216, F.S.).

<sup>8</sup> The PSC’s regulatory authority over telecommunications companies is contained in ch. 364, F.S.; its authority over electric utilities is contained in ch. 366, F.S.; its authority over natural gas utilities is in ch. 366 and 368, F.S.; and its authority over water and wastewater utilities is contained in ch. 367, F.S. The PSC also oversees the Telecommunications Access System for the hearing and speech impaired (ss. 427.701-427.718, F.S.). Additionally, it has some oversight related to the reuse of reclaimed water (s. 403.604, F.S.) and the siting of electrical power plants and transmission lines and natural gas transmission pipelines (ss. 403.501-403.539, F.S., and ss. 403.9401-403.9425, F.S.).

<sup>9</sup> S. 350.01, F.S. (1977).

<sup>10</sup> S. 350.01, F.S. (1979). The change in the selection process was created in ch. 78-426, L.O.F.

<sup>11</sup> SS. 1 & 2, ch. 2005-132, L.O.F.

including one member of the Senate, are appointed by the President of the Senate. These members serve at the pleasure of the presiding officer that appoints the member. The final three members are selected and appointed by the other six member of the Nominating Council.<sup>12</sup> Members serve four year terms, except that members of the House of Representatives and Senate serve two year terms concurrent with the elected terms of the House of Representatives.<sup>13</sup> The Nominating Council is staffed by the Office of Legislative Services.<sup>14</sup>

The process for selecting a PSC commissioner begins when the Nominating Council advertises the position. Persons interested in the position must submit their applications to the Nominating Council. The Nominating Council reviews those applications then, in a public meeting, selects the applicants that it believes are the most qualified and invites those candidates to be interviewed. At a subsequent public meeting, the Nominating Council interviews the selected candidates and must nominate six persons for each vacant position to be considered by the Oversight Committee. If the vacancy occurs by reason of an expired term, the Nominating Council is required to submit its nominees to the Oversight Committee by August 1 of the year prior to year in which the new term will commence. If the vacancy occurs for a reason other than an expired term, the Nominating Council is required to submit its nominees to the Oversight Committee within 60 days of the seat becoming vacant.<sup>15</sup>

Section 350.031(5), F.S., provides that the Nominating Council may not nominate a person to the Oversight Committee “until the council has determined that the person is competent and knowledgeable in one or more fields, which shall include, but not be limited to: public affairs, law, economics, accounting, engineering, finance, natural resource conservation, energy, or another field substantially related to the duties and functions of the commission.”

#### *Committee on Public Service Commission Oversight*

In 2005, the Legislature created the Committee on Public Service Commission Oversight in s. 350.012, F.S.<sup>16</sup> The Oversight Committee is a joint committee of the Legislature and consists of twelve members. There are six members each from the House of Representatives and the Senate, with two members from each chamber being from the minority party. The members from the House of Representatives are appointed by the Speaker of the House of Representatives, and the members from the Senate are appointed

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<sup>12</sup> Pursuant to s. 350.031(2), F.S., members of the Nominating Council are prohibited from owning stocks or bonds in any company regulated by the Commission, except for indirect investment through a mutual fund. They are also prohibited from being an agent or employee of, or having an interest in, a company regulated by the Commission or an affiliate of such a company. Each appointee is required to affirm this upon appointment to the Nominating Council. Members of the Nominating Council may be removed by the Speaker of the House of Representatives or President of the Senate for a violation of s. 350.031, F.S., or for other good cause.

<sup>13</sup> S. 350.031(1), F.S.

<sup>14</sup> S. 350.031(3), F.S.

<sup>15</sup> S. 350.031(6), F.S.

<sup>16</sup> S.1, ch. 2005-132, L.O.F.

by the President of the Senate. Committee members serve two-year terms based on the organization of the Legislature. The Speaker of the House appoints the chair of the committee in odd-numbered years and the vice-chair in even-numbered years; the Senate President appoints the chair in even-numbered years and the vice-chair in odd-numbered years. The Oversight Committee does not have a permanent staff. Instead, it is staffed by selected, existing legislative staff, when and as needed.<sup>17</sup>

From the list of nominees provided by the Nominating Council, the Oversight Committee must recommend three nominees to the Governor for each vacancy on the PSC.<sup>18</sup> The Oversight Committee meets publicly to interview the nominees and vote to determine who it will recommend.<sup>19</sup> The committee's recommendation is due to the Governor within 45 days after the committee receives the list of nominees from the Nominating Council.

### *Governor Appointment and Senate Confirmation*

As noted above, s. 350.001, F.S., declares that the PSC “has been and shall continue to be an arm of the legislative branch of government.” That section continues by stating that “[i]t is the desire of the Legislature that the Governor participate in the appointment process of commissioners to the Public Service Commission. The Legislature accordingly delegates to the Governor a limited authority with respect to the Public Service Commission by authorizing him or her to participate in the selection of members only in the manner prescribed by s. 350.031.”

Section 350.031, F.S., provides that the Governor shall fill a vacancy on the PSC by appointing one of the applicants recommended by the Oversight Committee. The Governor may only make the appointment following a background check of the nominees by the Florida Department of Law Enforcement. If the Governor does not make an appointment within 30 days of receiving the Oversight Committee's recommendations, the authority and duty to appoint someone to fill the vacancy reverts to the committee, which must choose from the names recommended to the Governor.<sup>20,21</sup>

The PSC commissioner appointments are subject to Senate confirmation in the next regular session after the vacancy occurs. If the Senate refuses to confirm or rejects the

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<sup>17</sup> S. 350.012, F.S.

<sup>18</sup> S. 350.031(7), F.S. Although the plain language of the statute states only that the Oversight Committee must select “three nominees” for recommendation to the Governor, the practice of the Oversight Committee has been to select three nominees *for each vacancy* for recommendation to the Governor.

<sup>19</sup> In addition to recommending nominees for appointment to the Public Service Commission, the Oversight Committee is responsible for appointing a Public Counsel subject to reconfirmation on a biennial basis. S. 350.012(2)(b), F.S. The committee is also authorized to file a complaint with the Commission on Ethics against a PSC commissioner, former PSC commissioner, former PSC employee, or member of the Nominating Council for alleged violations of ch. 350, F.S. S. 350.012(3), F.S.

<sup>20</sup> S. 350.031(7), F.S.

<sup>21</sup> It should be noted that s. 350.03, F.S., gives the governor “the same power to remove, suspend, or appoint to fill vacancies in the office of commissioners as in other offices.”

Governor's appointment, the Nominating Council is required to initiate the nominating process again within 30 days.<sup>22</sup>

## **Findings**

### **Issues Related to the Current Selection Process**

#### *Duplication of Functions*

Based on staff's review, the current selection process for PSC commissioners in Florida is unnecessarily duplicative. This duplication occurs in the screening and nominating stage of the process. The creation of the Oversight Committee in 2005 allows more legislators to be involved in the process, but the committee serves as little more than an additional screening body. Thus, the current selection process uses two separate bodies – the Nominating Council and the Oversight Committee – to serve essentially the same function. As a result, the investment of time and money required from the state and commissioner applicants is greater than it needs to be.<sup>23</sup>

It should be noted that the bill creating the Oversight Committee, as originally filed, envisioned a different role for the committee. The bill initially proposed removing the Governor from the selection process and granting the Oversight Committee authority to appoint PSC commissioners.<sup>24</sup> Under this proposal, the Nominating Council would have remained the only screening and nominating body in the selection process. Ultimately, after the bill moved through the legislative process, the Governor retained authority to appoint commissioners, and the Oversight Committee was kept to recommend applicants for appointment by the Governor.<sup>25</sup>

The current selection process requires that both the Nominating Council and the Oversight Committee devote staff and member time to planning, organizing, travelling to and from, and conducting public meetings at which these bodies will screen and interview applicants. Staff and members of these bodies must also incur travel expenses associated with these meetings. Because these bodies typically meet at a central location outside of Tallahassee (the Tampa and Orlando airports have been used regularly in the past), these bodies also incur the cost of retaining a meeting room.<sup>26</sup> To the extent that

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<sup>22</sup> S. 350.031(8), F.S.

<sup>23</sup> It should be noted that the addition of the Oversight Committee did not significantly increase the length of time required to select a commissioner. As noted above, the Oversight Committee is provided 45 days in which to forward its recommended list of nominees to the Governor for appointment. Pursuant to the 2005 statutory change, the time in which Governor must make an appointment decreased by approximately 30 days. Thus, the overall timeline increased by approximately 15 days only.

<sup>24</sup> 2005 SB 1322.

<sup>25</sup> Ch. 2005-132, L.O.F.

<sup>26</sup> Members of the Nominating Council serve without compensation, but are entitled to per diem and travel expenses funded by the Florida Public Service Commission Regulatory Trust Fund, pursuant to s. 350.031(3), F.S. Most other expenses of the Nominating Council are paid by the Office of Legislative Services, which staffs the Nominating Council. Based on discussion with Nominating Council staff, these expenses include staff travel, meeting rooms, mailings, and supplies. Similar costs are incurred by the Oversight Committee in performing its role.

these bodies both serve the same function of screening applicants, it appears that the current selection process requires the state to incur unnecessary expense.

In addition, applicants are subject to additional time and expense demands when they are screened by two separate bodies. Under the current selection process, applicants must participate in two separate public meetings prior to being recommended for appointment by the Governor. As noted above, these interviews often take place in various parts of the state, requiring the applicant to incur travel expense and to take time away from work and home. Serious applicants also spend significant time to prepare for these interviews, as they must prepare to be responsive to nine individuals on the Nominating Council and twelve individuals on the Oversight Committee. These increased commitments of time and expense, together with the daunting task of facing two public interviews (not including a potential confirmation hearing with the Senate), may discourage some qualified individuals from applying.

The only other state which appears to use a selection process involving multiple organizations is South Carolina. There, applicants are screened through a subcommittee of its State Regulation of Public Utilities Review Committee prior to being considered by the full committee. Under South Carolina's system, the subcommittee interviews all candidates, and the full committee is provided the opportunity, but is not required, to ask questions of candidates prior to the adoption of its final report to the legislature.<sup>27</sup>

### *Staffing*

Although the Nominating Council and Oversight Committee serve essentially the same function, the bodies are staffed by separate groups. As noted above, the Nominating Council is consistently staffed by the Office of Legislative Services, pursuant to statute. The Oversight Committee is staffed by existing legislative staff, as selected by the President of the Senate and the Speaker of the House, on an as-needed basis. Staffing of the committee varies from year to year, which can result in inefficiencies due to the lack of continuity.

### *Voting*

Prior to the 2005 statutory changes to the PSC selection process, the law required that the Nominating Council recommend to the Governor "not fewer than three persons for each vacancy occurring on the Public Service Commission."<sup>28</sup> Current law requires the Nominating Council to forward *exactly* six names per vacancy to the Oversight Committee.<sup>29</sup> The Oversight Committee then forwards *exactly* three names per vacancy

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<sup>27</sup> Telephone interview with staff of the South Carolina State Regulation of Public Utilities Review Committee (Approx. August 21, 2007 and September 11, 2007)

<sup>28</sup> S. 350.031(5), F.S. (2004).

<sup>29</sup> S. 350.031(6), F.S.



to the Governor.<sup>30</sup> It can be difficult to establish voting procedures to address how to reach an exact number of nominees.<sup>31</sup>

With this type of system, it may take multiple rounds of voting for the final candidates to be named. Since the 2005 statutory change, there have been two instances, one in the Nominating Council and one in the Oversight Committee, in which a fourth round of voting was necessary to name the final candidate to be forwarded onto the next stage in the process.<sup>32</sup> It is also possible under this system that there could be an impasse as to which candidate will be forwarded on in the next stage of the nomination process.

### Alternatives to the Current Selection Process

To address the duplication of functions in the current selection process while retaining a role for the Legislature, three alternatives stand out: (1) abolish either the Nominating Council or the Oversight Committee and retain the surviving body to screen and nominate applicants; (2) create a new screening and nominating body that is essentially a combination of the Nominating Council and Oversight Committee; or (3) retain the Nominating Council to screen and nominate applicants and establish the Oversight Committee as the body responsible for appointing PSC commissioners.

#### *Elimination of either the Nominating Council or the Oversight Committee*

Abolishing either the Nominating Council or the Oversight Committee would eliminate the duplication of functions noted above, along with the unnecessary time and expense associated with having two screening bodies in the selection process. It would also remove the potential disincentive to applicants of facing two public interviews in the selection process.

While it would be less of a burden on the applicants and the resources of the state, abolishing one of these bodies would reduce either direct public involvement or legislative involvement in the selection process. Abolishing the Nominating Council would reduce the direct public input provided through the seven non-legislative members of the Nominating Council. Abolishing the Oversight Committee would reduce legislative involvement in the process from the twelve members who sit on the Oversight Committee to the two members who sit on the Nominating Council. This would not, however, be unprecedented; it would merely be a return to the process used prior to the 2005 statutory changes.

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<sup>30</sup> S. 350.031(7), F.S. Although the plain language of the statute states only that the Oversight Committee must select “three nominees” for recommendation to the Governor, the practice of the Oversight Committee has been to select three nominees *for each vacancy* for recommendation to the Governor.

<sup>31</sup> Memorandum from Michael Dodson, General Council, Office of Legislative Services to Senator Michael S. Bennett “Mike” Bennett, Chairman, Public Service Commission Nominating Council, July 31, 2006.

<sup>32</sup> Review of meeting records of the Florida Public Service Commission Nominating Council and the Public Service Commission Oversight Committee. The specific votes were the August 11, 2006, meeting of the Nominating Council and the March 26, 2007, meeting of the Oversight Committee.

Under this approach, the Office of Legislative Services could be designated to consistently staff the surviving body. This would allow for more continuity in staffing and increased institutional knowledge of the selection process.

#### *Creation of New Nominating Body*

Alternatively, a single screening and nominating body could be created as a hybrid of the Nominating Council and Oversight Committee. Like the existing Nominating Council, the new body would include legislative and non-legislative members, but the ratio of legislative members would be increased. Any number of combinations could be employed, provided that the House of Representatives and the Senate are equally represented. Under this alternative, the Office of Legislative Services could be designated to consistently staff the new body. This would allow for more continuity in staffing and increased institutional knowledge of the selection process.

Creating a hybrid of the existing nominating bodies would maintain direct public input from non-legislative members. It would also likely involve more legislative members as compared to the existing Nomination Council. It is not clear, however, whether legislative participation beyond the level that currently exists on the Nominating Council would provide any discernable benefit to the selection process.

Creating a single, hybrid entity would eliminate the current redundancy of having two nominating bodies and the associated time and expense involved. It would also remove the potential disincentive to applicants of facing two public interviews in the selection process.

South Carolina uses a similar type of nominating body. Its State Regulation of Public Utilities Review Committee consists of three members of the House of Representatives, three members of the Senate, and four persons from the general public at large.<sup>33</sup> Among the committee's powers is the power to nominate no more than three candidates for each seat on the Public Service Commission. The commissioners are then elected by the state legislature.<sup>34</sup>

#### *Retention of Nominating Council for Screening and Oversight Committee for Appointment*

Another alternative is to retain the Nominating Council in its current capacity and authorize the Oversight Committee to appoint PSC commissioners. As noted above, this alternative reflects the approach taken in the original version of the bill creating the Oversight Committee. This approach would eliminate the redundancy of having two nominating bodies. It would also give the Legislature ultimate authority to appoint the heads of an agency that is, by statute, an arm of the legislative branch of government. As

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<sup>33</sup> The Speaker of the House of Representatives and the Chairman of the Senate Judiciary Committee each appoint two members of the General public.

<sup>34</sup> SS. 58-3-520 and 58-3-530 South Carolina Code of 1976. This committee also conducts annual performance reviews of the commissioners.

shown in Appendix A, commissioners are similarly elected by the legislatures in South Carolina and Virginia.

This approach would not reduce the time and expense involved in planning, organizing, travelling to and from, and conducting two public meetings, nor would it reduce the time and expense demands on applicants. Further, applicants would still be faced with preparations for two public interviews.

#### Other Considerations Related to the Current Selection Process

In considering how the PSC commissioner selection process may be changed, the Legislature must also consider how the Public Counsel will be appointed. The position of Public Counsel was created by law in 1974. The Public Counsel is under the legislative branch of government and is charged with representing the interests of the general public of Florida in matters before the PSC. Currently, the Public Counsel is appointed by the Oversight Committee and serves at the pleasure of that committee, subject to biennial reconfirmation. If the Oversight Committee is eliminated, the Legislature must ensure that it establishes another means to appoint and reconfirm the Public Counsel.

As noted above, the current selection process can lead to difficulties in establishing voting procedures. Current law requires the Nominating Council to forward *exactly* six names per vacancy to the Oversight Committee. The Oversight Committee then forwards *exactly* three names per vacancy to the Governor. These requirements create the potential for tie votes and add complexity to the voting process. This issue may be addressed by authorizing the Nominating Council to nominate *no fewer than* six applicants per vacancy to the Oversight Committee. Similarly, the Oversight Committee could be authorized to recommend *no fewer than* three persons *per vacancy*. This type of provision would give the Nominating Council and Oversight Committee the flexibility to structure voting procedures that would avoid a potential impasse.

#### Conclusion

Based on staff's review, the current selection process for PSC commissioners in Florida is unnecessarily duplicative. The current selection process uses two separate bodies – the Nominating Council and the Oversight Committee – to serve the same function of screening and nominating applicants. As a result, the investment of time and money required from the state and commissioner applicants is greater than it needs to be. In addition, current law creates a lack of continuity in staffing that can lead to inefficiencies. Current law also makes it difficult to establish voting procedures that avoid a potential impasse in nominating applicants for appointment.

To address the duplication of functions in the current selection process while retaining a role for the Legislature, three alternatives stand out: (1) abolish either the Nominating Council or the Oversight Committee and retain the surviving body to screen and nominate applicants; (2) create a new screening and nominating body that is essentially a

combination of the Nominating Council and Oversight Committee; or (3) retain the Nominating Council to screen and nominate applicants and establish the Oversight Committee as the body responsible for appointing PSC commissioners. None of these alternatives are without their advantages and disadvantages. Under any alternative, including maintenance of the status quo, changes to current law can be made to address the staffing and voting issues raised in this report.

## APPENDIX A

### Process for Selection of Utility Commission Members in Other States

Every state has at least one regulatory body overseeing the utility industries, although the names and jurisdictions of those bodies differ. Most state utility commissions have regulatory oversight over electric, natural gas, telephone, water, and wastewater utilities. Some state utility commissions regulate various other industries or matters, including cable franchising, railroads, motor carriers, or household movers. A few state utility commissions also have regulatory authority over corporate filings, manufactured homes, and insurance.<sup>1</sup>

Commissioners for state utility commissions are selected by a variety of methods. The following table shows the methods used in each state.

<b>Selection Process</b>	<b>Number Of State Utility Commissions<sup>2</sup></b>	<b>State</b>
Appointed by Governor after Nomination Process (subject to Legislative confirmation)	3	Florida, Indiana, Ohio
Appointed by Governor, no Nomination Process (subject to Legislative confirmation)	33	Alaska, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, <sup>3</sup> Michigan, Minnesota, Missouri, Nebraska, <sup>4</sup> Nevada, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Washington, West Virginia, Wisconsin, Wyoming
Elected by Electors of State	11	Alabama, Arizona, Georgia, Louisiana, Mississippi, Montana, Nebraska, <sup>5</sup> New Mexico, North Dakota, Oklahoma, South Dakota

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<sup>1</sup> Review of state statutes and state commission websites.

<sup>2</sup> Includes the District of Columbia and multiple agencies in some states.

<sup>3</sup> Massachusetts' Department of Telecommunications and Cable.

<sup>4</sup> Nebraska's Power Review Board has authority over publicly-owned electric utilities, which represent all of the electric utilities in that state.

<sup>5</sup> Nebraska's Public Service Commission.

## APPENDIX A

Selection Process	Number Of State Utility Commissions <sup>2</sup>	State
Elected by State Legislature	2	South Carolina, Virginia
Other	4	Massachusetts, <sup>6</sup> New Hampshire, <sup>7</sup> Tennessee, <sup>8</sup> Vermont <sup>9</sup>

Source: Information from state statutes and state websites.

As shown above, Indiana and Ohio are the only states other than Florida that use nominating councils specifically dedicated to nominating commissioners.<sup>10</sup> Indiana's nominating council consists of seven members, three of whom are appointed by the governor and one each is appointed by the speaker of the House of Representatives, the president pro tempore of the Senate, the minority leader of the Senate, and the minority leader of the House of Representatives.<sup>11</sup> Ohio's nominating council consists of 12 members. These members represent consumers, utilities, the business community, and ordinary citizens.<sup>12</sup> In both of these states, the Governor ultimately appoints commissioners from the list of individuals recommended by the nominating council.

In South Carolina, commissioners are elected by the state legislature but are first vetted through the State Regulation of Public Utilities Review Committee. This committee, which consists of both legislators and members of the general public, reviews the qualifications of the applicants before forwarding any applicant for consideration by the Legislature as a whole.

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<sup>6</sup> The Commissioners of the Massachusetts Department of Public Utilities are appointed by the Secretary of Energy and Environmental Affairs

<sup>7</sup> Appointed by the Governor and confirmed by the state's Executive Council, which is a body of five elected officials who participate in the executive management of the state. <http://www.nh.gov/council/overview.html>

<sup>8</sup> In Tennessee, the Governor, the Speaker of the Senate, and the Speaker of the House of Representatives each appoint one member and jointly approve a fourth.

<sup>9</sup> In Vermont, potential commissioners are qualified through the Judicial Nomination Board prior to being appointed by the Governor.

<sup>10</sup> Vermont uses its Judicial Nominating Board to review a list of utility commission nominees from the Governor based on judicial criteria and standards. The Governor may only select a person that the Board considers qualified (Vermont Statute 30 s. 3).

<sup>11</sup> Indiana Code 8-1-1.5-3.

<sup>12</sup> Ohio Code s. 4901.021.